IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

RONALD D. MAYNARD, dba RON'S AUTO BODY REPAIR, Appellant, v. KING COUNTY, a municipal, corporation; and DEPARTMENT OF DEVELOPMENT AND ENVIRONMENTAL SERVICES, Code Enforcement Section, an administrative department of King County, Respondents.	)	NO. 62833-0–I DIVISION ONE UNPUBLISHED OPINION FILED: August 3, 2009

Leach, J. — Ronald Maynard appeals the trial court's summary dismissal of his complaint for declaratory judgment and injunctive relief and its denial of his motion for reconsideration. Maynard argues the doctrines of equitable estoppel and laches bar King County from enforcing its zoning code to prohibit his operation of an automobile body repair shop on residentially zoned property. We affirm the trial court's orders because Maynard fails to establish that he reasonably relied on representations of fact made by the County as required by the equitable estoppel doctrine. In addition, the general policy against applying

equitable estoppel and laches to the government applies to the facts of this case and precludes Maynard from asserting either of these equitable defenses.

Background

In 1995, Maynard entered into an agreement to purchase the property located at 13360 Martin Luther King Jr. Way S., Seattle, Washington 98178. At that time, the seller operated a landscaping business on the property, using three structures on it: a shed, mobile home, and garage. Maynard planned to operate an automobile repair shop on the property, so before finalizing the sale, he conducted a 30-day feasibility study. That study consisted of one telephone call to the King County Department of Development and Environmental Services (DDES), in which a zoning technician told Maynard that the shop was an allowed use on the property. Based on this statement, Maynard purchased the property and began operating "Ron's Auto Body Rebuild" using the shed, mobile home, and garage as part of the business.

Over the next two years, Maynard invested $16,500 in improvements to the property and buildings, which included the installation of a paint spray coating room. Before installing the room, Maynard obtained approval in July 1997 from the Puget Sound Air Pollution Control Agency.[1] King County conducted a fire inspection of the shop in January 2003, and the King County

[1] The agency is now called Puget Sound Clean Air Agency.

Department of Assessments listed the garage and service buildings as the use of the property.

In June 2003, a community group filed a complaint involving the property. Code Enforcement Officer Jeri Breazeal investigated this complaint and reported code violations. In a letter dated June 26, 2003, Breazeal informed Maynard these violations included the accumulation of inoperable vehicles and automobile parts and "[t]he expansion of a non conforming use (automobile repair) in a residential zone."[2] The letter directed Maynard to remove the inoperable vehicles and parts and to "[c]ease the use of the areas of the property that were not historically used for the business." The letter also contained a warning regarding the issuance of a notice and order if Maynard failed to resolve the violations. According to Maynard, he left a phone message with Breazeal, stating that he had complied with the requirements of the letter to continue operating the shop on the property. No further code enforcement activity immediately followed the June 2003 letter.[3]

On January 5, 2007, Breazeal conducted another site visit based on a

[2] Breazeal noted in a complaint research form that the property was designed R-24, a classification that allows up to 24 dwellings per acre.

[3] Under Title 23 of the King County Code (KCC), if Maynard failed to bring the property into compliance, the next step would have been to issue a notice and order. A notice and order represents an administrative finding of code violations and may be appealed to the King County Hearing Examiner. KCC 23.24.020.

complaint involving a guest on Maynard's property. After confirming that Maynard was operating the shop on the property, she reviewed King County records and DDES permitting history and determined that the shop was an illegal use under the code.[4]

Breazeal sent Maynard a letter dated February 26, 2007, listing code violations that included the accumulation of inoperable vehicles and parts, the placement of a second mobile home without the required permits and inspections, and the "illegal operation of an automobile repair shop."[5] Maynard was ordered to remove the inoperable vehicles and parts, as well as the second mobile home unless he obtained permitting, and to "cease the use of the property for commercial businesses that are not allowed under the zoning code." As in the June 2003 letter, the February 2007 letter stated that a legal notice was being prepared that would subject Maynard to civil penalties upon issuance of an order.

But before a notice and order was issued, Maynard filed a complaint for declaratory judgment and injunctive relief against the County and DDES on June 25, 2007, claiming that the doctrines of equitable estoppel and laches prevented

[4] Breazeal stated in her declaration that the records showed that "all permits had been issued as residential uses."

[5] Breazeal explained that the original mobile home had been approved as a residential use and the garage had been approved as an accessory to a residential use.

the enforcement of the code against him. Maynard further argued that the King County Hearing Examiner did not have jurisdiction to rule on these equitable defenses. The County agreed on the jurisdiction issue only.

The parties entered into a stipulation and voluntary compliance agreement resolving all of the code violations stated in Breazeal's February 2007 letter, except the commercial use of the original mobile home, shed, and garage. Under the agreement, Maynard admitted that the operation of his shop was not a legal nonconforming use under the provisions of the King County Code, leaving only one issue to be decided by the trial court, whether the doctrines of equitable estoppel and laches barred enforcement of the zoning code.

The trial court granted King County's motion for summary judgment on October 10, 2008. The court denied Maynard's motion for reconsideration. Maynard appeals both orders.

Standard of Review

This court reviews an order granting summary judgment de novo and engages in the same inquiry as the trial court.[6] Summary judgment is proper "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any

[6] Weden v. San Juan County, 135 Wn.2d 678, 689, 958 P.2d 273 (1998).

material fact and that the moving party is entitled to a judgment as a matter of law."[7] A material fact is one upon which the outcome of the litigation depends.[8] Summary judgment is proper when reasonable minds could reach but one conclusion regarding the material facts.[9]

A motion for reconsideration is reviewed for an abuse of discretion.[10]

Discussion

I. Equitable Estoppel

Maynard contends that the doctrine of equitable estoppel bars the County from enforcing its zoning regulations against him. To establish equitable estoppel against a governmental entity, a party must prove five elements by clear, cogent, and convincing evidence:

> (1) a statement, admission, or act by the party to be estopped, which is inconsistent with its later claims; (2) the asserting party acted in reliance upon the statement or action; (3) injury would result to the asserting party if the other party were allowed to repudiate its prior statement or action; (4) estoppel is 'necessary to prevent a manifest injustice'; and (5) estoppel will not impair governmental functions.[11]

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[7] CR 56(c).

[8] Greater Harbor 2000 v. City of Seattle, 132 Wn.2d 267, 279, 937 P.2d 1082 (1997).

[9] Greater Harbor 2000, 132 Wn.2d at 279.

[10] Meridian Minerals Co. v. King County, 61 Wn. App. 195, 203-04, 810 P.2d 31 (1991).

[11] Silverstreak, Inc. v. Dep't of Labor & Indus., 159 Wn.2d 868, 887, 154 P.3d 891 (2007) (quoting Kramarevcky v. Dep't of Soc. & Health Servs., 122 Wn.2d 738, 743, 863 P.2d 535 (1993)).

Maynard asserts that these elements have been established because the record shows that he relied on inconsistent statements made by the County to his detriment. Specifically, he argues that the statement by the zoning technician in 1995 and the statement by Breazeal in the June 2003 letter describing the code violation as an "expansion of a non conforming use (automobile repair)" are representations of fact inconsistent with the statement by Breazeal in the February 2007 letter describing the code violation as the "illegal operation of an automobile repair shop in a residential zone."

This argument fails for several reasons. First, while the County's statements are inconsistent, they are representations of questions of law rather than questions of fact. Contrary to Maynard's position, which he supports only by citation to authority outside of Washington, our courts have held that statements relating to whether a particular use of property is allowed under a zoning ordinance are representations of questions of law.[12] Therefore, equitable estoppel does not apply here since the doctrine is inapplicable "where the representations relied upon are questions of law rather than of fact."[13]

Second, Maynard cannot show that he reasonably relied on the DDES

[12] City of Mercer Island v. Steinmann, 9 Wn. App. 479, 483, 513 P.2d 80 (1973) (citing City of Mercer Island v. Kaltenbach, 60 Wn.2d 105, 107, 371 P.2d 1009 (1962)).

[13] Concerned Land Owners of Union Hill v. King County, 64 Wn. App. 768, 778, 827 P.2d 1017 (1992) (citing Chemical Bank v. WPPSS, 102 Wn.2d 874, 905, 691 P.2d 524 (1984)).

zoning technician's statement. "In addition to satisfying the elements of equitable estoppel, the party asserting the doctrine must show that the reliance was reasonable."[14] Our courts have held that "'[r]eliance is justified only when the party claiming estoppel did not know the true facts and had no means to discover them.'"[15] For example, in Concerned Land Owners of Union Hill v. King County,[16] a neighbor was told by an investigator for the King County Building and Land Department (BALD) that she would receive notice before the County granted preliminary approval of two short plat applications. When the County determined that notice was unnecessary under the statute and approved the applications without giving notice, the neighbors challenged the approvals.[17] In affirming the County's decision, the Union Hill court held that the reliance on the investigator's statement was not reasonable since the neighbor "could have discovered the true facts by further inquiring at BALD."[18]

Similarly, Maynard fails to create any issue of fact as to whether his reliance on the zoning technician's statement was reasonable. Like the neighbor in Union Hill, Maynard could have discovered the true facts through

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[14] Union Hill, 64 Wn. App. at 778 (citing Marashi v. Lannen, 55 Wn. App. 820, 824, 780 P.2d 1341 (1989)).

[15] Union Hill, 64 Wn. App. at 778 (quoting Marashi, 55 Wn. App. at 824-25).

[16] 64 Wn. App. 768, 771, 827 P.2d 1017 (1992).

[17] Union Hill, 64 Wn. App. at 771.

[18] Union Hill, 64 Wn. App. at 778.

further inquiry at DDES. The cases on which Maynard relies, Beal v. City of Seattle[19] and Babcock v. Mason County Fire District No. 6,[20] are distinguishable. Both cases address the reliance element under an exception to the public duty doctrine and do not discuss reliance under the equitable estoppel doctrine.

Finally, Maynard fails to demonstrate that applying estoppel in this case is necessary to prevent a manifest injustice and will not impair governmental functions. This court in City of Mercer Island v. Steinmann[21] addressed a factually similar situation and held that equitable estoppel could not be asserted to prevent a city from enforcing its zoning regulations. In Steinmann, a landowner, whose property was located in an area zoned only for single family homes, obtained a permit for the construction of rooms above his garage, indicating that the remodeling was being done for personal use.[22] The city conducted inspections during the construction of the rooms.[23] After the remodeling was completed, the landowner rented the rooms as apartments over the course of several years.[24] When the city discovered this use, it sought to enjoin the rental of the units as a public nuisance under its zoning code.[25] The

[19] 134 Wn.2d 769, 954 P.2d 237 (1998).
[20] 144 Wn.2d 774, 30 P.3d 1261 (2001).
[21] 9 Wn. App. 479, 481, 513 P.2d 80 (1973).
[22] Steinmann, 9 Wn. App. at 480.
[23] Steinmann, 9 Wn. App. at 480.
[24] Steinmann, 9 Wn. App. at 481.
[25] Steinmann, 9 Wn. App. at 480.

landowner argued that the city was estopped from enforcing the code against him because it had previously acquiesced to his use of the property by issuing a building permit, conducting inspections of the rooms, and allowing him to rent the units for several years.[26] In rejecting this argument, the Steinmann court held that equitable estoppel will not apply to a governmental entity "where its application would interfere with the discharge of governmental duties."[27] According to the Steinmann court, estoppel may apply against a governmental entity acting in a proprietary capacity, but not when it acts in a governmental capacity unless "it is clearly necessary to prevent obvious injustice."[28] Declaring "the administration of zoning ordinances . . . is a governmental rather than a proprietary function,"[29] the Steinmann court concluded that a governmental entity is "not precluded from enforcing zoning regulations if its officers have issued building permits allowing construction contrary to such regulations, have given general approval to violations of the regulations, or have remained inactive in the face of such violations."[30]

As in Steinmann, this case involves a governmental function, the County's enforcement of its zoning code. Further, like the property owner in Steinmann,

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[26] Steinmann, 9 Wn. App. at 480-81.
[27] Steinmann, 9 Wn. App. at 481.
[28] Steinmann, 9 Wn. App. at 482 (citing Bennett v. Grays Harbor County, 15 Wn.2d 331, 341, 130 P.2d 1041 (1942)).
[29] Steinmann, 9 Wn. App. at 482.
[30] Steinmann, 9 Wn. App. at 483.

Maynard cannot assert that the County is estopped from enforcing its zoning regulations based on its earlier acquiescence to his use of the property. The statement by the zoning technician in 1995, the listing of the buildings and land as commercial by the King County Department of Assessments, the issuance of permits by DDES and the Puget Sound Air Pollution Control Agency, the fire inspection conducted by King County in 2003, and the 2003 code enforcement investigation by Breazeal are thus insufficient under Steinmann to establish that applying estoppel will not interfere with the County's governmental function.

Maynard maintains that applying estoppel will not interfere with the County's governmental function because the operation of his shop is not "detrimental to existing surrounding land uses." This argument ignores that KCC 23.02.030(A) provides that "[a]ll civil code violations are hereby determined to be detrimental to the public health, safety and environment and are hereby declared public nuisances." RCW 7.48.190 states that "[n]o lapse of time can legalize a public nuisance, amounting to an actual obstruction of public right." Thus, the operation of Maynard's automobile repair shop, like the rental of apartments in Steinmann, constitutes a public nuisance that the County may enjoin without any showing of harm. Maynard's reliance solely upon authority outside of Washington to support his argument that the government must prove that a code

violation causes particularized harm is unpersuasive.

Nor can Maynard demonstrate that a manifest injustice exists. Like the property owner in Steinmann, Maynard cannot assert that his investments in the property and the loss of income he receives from operating the shop give rise to an estoppel. Furthermore, the zoning code allows numerous other uses of the property. The trial court properly determined that Maynard failed to satisfy the requirements of equitable estoppel.

We also conclude that the trial court did not abuse its discretion in denying Maynard's motion for reconsideration, in which he contends that the manifest injustice element only requires a party to show "by the simple preponderance that the unfairness is obvious and readily discernable." Maynard fails to cite any Washington authority to support this contention, and controlling Washington case law establishes that the elements of equitable estoppel must be proven with clear, cogent, and convincing evidence.[31] In Steinmann, the court further explained that to prove the manifest justice element, "[t]he evidence must present unmistakable justification for imposition of the doctrine when a municipality has acted in its governmental capacity."[32] As discussed above, Maynard has not raised an issue of fact under this standard. In addition, the out-

[31] Silverstreak, 159 Wn.2d at 887.

[32] Steinmann, 9 Wn. App. at 482 (citing State v. Charlton, 71 Wn.2d 748, 430 P.2d 977 (1967)).

of-state authority cited by Maynard is unconvincing since none of the cases provides a definition or explanation of manifest injustice. The trial court did not abuse its discretion in denying the motion for reconsideration.

II. Laches

Maynard contends that the doctrine of laches bars the County from enforcing the zoning code against him. The elements of laches consist of "'(1) knowledge or reasonable opportunity to discover on the part of a potential plaintiff that he has a cause of action against a defendant; (2) an unreasonable delay by the plaintiff in commencing that cause of action; (3) damage to defendant resulting from the unreasonable delay.'"[33]

The policy against applying equitable estoppel to the government, as stated in Steinmann, also applies to laches.[34] Thus, the County cannot be precluded from enforcing its zoning regulations even though its officials remained inactive in the face of such violations. Moreover, the provisions of KCC 23.02.030(A) and RCW 7.48.190, discussed above, designate the operation of Maynard's shop as a public nuisance that cannot be legalized by any time lapse. As to the damage element, the code permits other uses of the

[33] Valley View Indus. Park v. City of Redmond, 107 Wn.2d 621, 635, 733 P.2d 182 (1987) (quoting Buell v. City of Bremerton, 80 Wn.2d 518, 522, 495 P.2d 1358 (1972)).

[34] Steinmann, 9 Wn. App. at 482. See Hous. Auth. v. Ne. Lake Washington Sewer & Water Dist., 56 Wn. App. 589, 591-93, 784 P.2d 1284 (1990).

property. We agree with the trial court that the doctrine of laches does not bar the County from enforcing its zoning code against Maynard.

Conclusion

The trial court properly dismissed Maynard's complaint for declaratory judgment and injunctive relief and denied his motion for reconsideration. Maynard fails to satisfy the requirements of equitable estoppel because he did not reasonably rely on representations of fact made by the County. Further, the facts of this case do not support deviating from the general policy against applying equitable estoppel and laches to the government.

Affirmed.

Leach, J.

WE CONCUR:

Cox, J.

Becker, J.